IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7850 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK RADHESHYAM PAMAR RAJPUT

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/02/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.Banna Datta for Ms.K.U.Mishra, learned advocate on behalf of the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 28-5-1999 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad City against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- C interalia indicate that three prohibition cases are registered against the petitioner at Amraiwadi and Nashabandhi police stations on 14-3-99, 5-4-99 and 27-5-99 respectively. That in each case, the country made liquor was seized from the possession of the petitioner / detenu and all these cases are pending for further investigation. Over and above, three witnesses on assurance of their anonymity have given their statement dated 27-5-1999 against bootlegging activities of the petitioner and have referred to alleged incidents dated 3-5-99 and 30-4-99 respectively. That on the basis of the said material, the respondent No. 1 as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the petitioner was released on bail in respect to C.R. No : 5151/99 and 5187/99 registered at Amraiwadi Police Station on 6-4-99. However, the petitioner was in judicial custody in respect to C.R. No : 480/99 on the date of the passing of the impugned order. That impugned order suffers from vice of non application of mind inasmuch as, the detaining authority has failed to consider the aspect of claiming of cancellation of bail granted to the petitioner as available under Section 437(5) of CrPC and as such, the impugned order is bad in law.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention

order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that in last but one para, the detaining authority has observed that the petitioner has been released in two offences registered against him while, he was in judicial custody in respect to 3rd offence. It is further submitted by him that the petitioner is like to get himself released on bail in third offence at any point of time and thereafter, is likely to continue his anti social activities and as such, to prevent the petitioner, detention order is necessary. That the said observation suggests that before passing the impugned order, the detaining authority had not considered the aspect of claiming of cancellation of bail to prevent the petitioner and as such, it is difficult to uphold the order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 28-5-99 passed by respondent No. - The Commissioner of Police, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner - ASHOK RADHESHYAM PAMAR RAJPUT is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 7-2-2000 [A.K.Trivedi, J.]

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